

48A C.J.S. Judges § 288

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(3) Particular Interests

§ 288. Probate matters

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

A judge directly interested in a decedent's estate ordinarily cannot act in matters affecting the estate.

Ordinarily, a judge may not act as such in the matter of a decedent's estate where the judge is interested in such estate.¹ Generally, a judge who is interested in a decedent's estate is disqualified to act in relation to such estate under the general provisions disqualifying on the ground of interest.² However, in order that such a judge may be disqualified, following the general rules, the interest must be direct and not merely remote or contingent,³ and there are instances of seeming interest

which will not serve to disqualify a judge.⁴ Mere custodial interests usually do not serve to disqualify a judge.⁵

A will drawn by a probate judge cannot be probated before the judge.⁶ Under some statutes, a probate judge is disqualified from acting on an application for probate of a will where the judge is a subscribing witness or is necessarily examined or to be examined as a witness.⁷

Debtor.

Where the probate judge is a debtor of an estate, the judge is sometimes disqualified to act in respect thereof.⁸ However, a judge is not disqualified from acting in a probate proceeding by the fact that the judge is a debtor of the estate where the debt is for a sum certain, and the judge's participation does not result in an increase or diminution of the obligation or defer or mitigate the burden of payment.⁹

Creditor.

A judge of probate who is a creditor of the estate but who is not a party is not necessarily disqualified from acting in matters of the administration of the estate.¹⁰ The judge is not disqualified to act in matters not bearing directly on, or involving a determination in respect of, the claim.¹¹

Surety.

A surety on a bond who subsequently becomes judge of the court in which are pending the proceedings during which the bond was given is disqualified to act in such proceedings¹² or in any matter or proceeding in which liability on such bond may be involved.¹³ However, the fact of having been surety on the bond of a temporary administrator will not disqualify the judge to act on the accounts and doings of the same person who became regular administrator.¹⁴

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Footnotes

1 Mass.—[In re Aldrich](#), 110 Mass. 189, 1872 WL 8905 (1872).

Real estate purchase from estate

The canons of judicial conduct requiring a judge to disqualify him- or herself in a proceeding pending in the judge's court in which the judge's impartiality might reasonably be questioned provided sufficient notice to the judge that participation in a real estate purchase from an estate in probate would bring into question the judge's impartiality in approving the final account of an executor of that estate.

Conn.—[Patterson v. Council on Probate Judicial Conduct](#), 215 Conn. 553, 577 A.2d 701 (1990).

2 Ind.—[State ex rel. Leisure v. Superior Court of Madison County](#), 236 Ind. 18, 138 N.E.2d 142 (1956).

3 Cal.—[Cohn v. Superior Court in and for Kern County](#), 13 Cal. App. 2d 565, 57 P.2d 186 (4th Dist. 1936).

Ind.—[State ex rel. Anderson-Madison County Hospital Development Corp. v. Superior Court of Madison County](#), 245 Ind. 371, 199 N.E.2d 88 (1964).

4 Ala.—[Ellis v. Smith](#), 42 Ala. 349, 1868 WL 555 (1868).

N.Y.—[In re Bingham](#), 127 N.Y. 296, 27 N.E. 1055 (1891).

5 N.Y.—[In re Hancock's Will](#), 91 N.Y. 284, 1883 WL 12519 (1883).

Wis.—[Richter v. Leiby's Estate](#), 107 Wis. 404, 83 N.W. 694 (1900).

6 N.H.—[Moses v. Julian](#), 45 N.H. 52, 1863 WL 3294 (1863).

7 N.Y.—[In re Carter's Will](#), 193 A.D. 356, 184 N.Y.S. 40 (3d Dep't 1920).

8 Ind.—[State ex rel. Parker v. Vosloh](#), 222 Ind. 518, 54 N.E.2d 650 (1944).

9 U.S.—[Brock v. Barnsdall Oil Co](#), 314 U.S. 643, 62 S. Ct. 83, 86 L. Ed. 516 (1941).

10 Tex.—[Dial v. Martin](#), 37 S.W.2d 166 (Tex. Civ. App. Amarillo 1931), writ granted, (July 22, 1931) and rev'd on other grounds, 57 S.W.2d 75, 89 A.L.R. 571 (Tex. Comm'n App. 1933).

11 Cal.—[Regents of University of Cal. v. Turner](#), 159 Cal. 541, 114 P. 842 (1911).

12 Ind.—[Metsker v. Whitesell](#), 181 Ind. 126, 103 N.E. 1078 (1914).

13 Ala.—[Wilson v. Wilson](#), 36 Ala. 655, 1860 WL 600 (1860).

Ind.—[Metsker v. Whitesell](#), 181 Ind. 126, 103 N.E. 1078 (1914).

14 Tex.—[Halbert v. Martin](#), 30 S.W. 388 (Tex. Civ. App. 1895).